IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10270 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AJAMTULLABEG AJIJIBEG MIRZA

Versus

PC PANDEY OR SUCCESSOR

Appearance:

MRS PREMLATA B KADAM for Petitioner

MR UDAI R BHATT,AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

1. The petitioner through his wife has challenged by way of this petition under Article 226 of the Constitution of India his detention order passed by Police Commissioner, Ahmedabad City on 20th July, 2000,

in exercise of powers conferred upon him in Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner is under detention from 25th July, 2000.

2. As per the grounds of detention, two offences against the petitioner came to be registered before the Dariyapur and Shahibag Police Stations on 1st June, 2000 and 7th July, 2000 under Sections 452, 394, 506(2), 399, 400, 401, 402 of the Indian Penal Code and under Section 25(1)(B)(A) of the Arms Act. From the investigation papers of the above said two crimes registered against the petitioner, the detaining authority came to the conclusion that the petitioner was indulged in the cases of theft and illegal activities. Detaining authority also relied on the statement of two witnesses but on assurance of anonymity, narrated the incidents of 25th June 2000 and 1st of June, 2000, whereby, it is alleged that the petitioner was hardened criminal and headstrong person and had beaten the respective witness. Due to his fear, witnesses were not prepared to give the statements. From the above material, the detaining authority came to the conclusion that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act and was objection to public order due to his anti social as well as illegal activities.

3. Learned advocate Mr. H.R. Prajapati for Mrs. Premlata Kadam was heard on behalf of the petitioner and learned AGP Mr. Udai Bhatt was heard on behalf of respondents.

4. The order impugned was attacked on behalf of the petitioner on various grounds. The detention order was challenged on the ground of non-application of mind by the detaining authority, vitiating the order of detention.

5. From the grounds, it is clear that at the time of serving of the detention order the petitioner was in judicial custody in the above two crimes registered against him. However, detaining authority observed that it was likely that the petitioner on preferring the bail application was likely to be released on bail by the competent court and was likely to indulge in illegal activities, and detaining authority further observed that provisions for the cancellation of bail under Sec. 437(5) of the Cr.P.C. was likely to consume more time and, therefore, that was not thought fit by the detaining authority to prevent the illegal activities of the

petitioner forthwith.

6. Non-application of mind by the detaining authority clearly emerges from the above observations. Firstly at the time of serving of the order, the petitioner was in judicial custody and was not likely to indulge in any illegal activities. Anticipation by the detaining authority about releasing the petitioner on bail and indulging in illegal activities also reveals non-application of mind on the part of the detaining authority. It was not necessary at all to pass any order under the detention when the petitioner was in judicial custody. Secondly, it was non-application of mind on the part of the detaining authority that the detaining authority anticipated that he was likely to be released on bail. When the detaining authority had an opportunity in such circumstances to oppose the bail on the ground that the petitioner was likely to continue his illegal activities and thereafter also the detaining authority had opportunity to resort to the provisions of the cancellation of bail, instead, the detaining authority anticipated the bail of the petitioner and brush aside the remedies of 437 (5) of the Cr.P.C. for the cancellation of bail by merely saying that the same was likely to consume more time. The order of detention therefore is vitiated and the impugned detention order is therefore required to be set aside on this ground alone.

7. In this view of the matter, the petition is allowed. The detention order passed by the Police Commissioner, Ahmedabad City, under the PASA Act on 20th of July, 2000 against the petitioner is ordered to be quashed and set aside. The petitioner - Ajmatulla Ajijbeg Mirza is ordered to be set liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair